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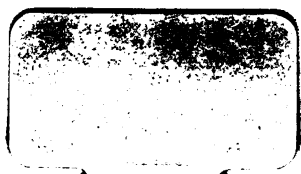
THIESING

Trading with the Enemy

1917

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65TH CONGRESS {
1st Session }

SENATE

DOCUMENT
{ No. 107 }

X^{co} TRADING WITH THE ENEMY

AN ARTICLE

UPON THE MEASURES ADOPTED BY GERMANY
IN RETALIATION FOR THOSE PROMULGATED
BY OTHER NATIONS

by
THEO. H. THIESING



PRESENTED BY MR. BECKHAM
SEPTEMBER 11, 1917.—Referred to the Committee on Printing

WASHINGTON
GOVERNMENT PRINTING OFFICE
1917

SENATE RESOLUTION NO. 133.

[Reported by Mr. Smith of Arizona.]

IN THE SENATE OF THE UNITED STATES,
September 20, 1917.

Resolved, That the articles submitted by the Senator from Kentucky (Mr. Beckham) on September eleventh, nineteen hundred and seventeen, entitled "Trading With the Enemy," prepared by Theodore H. Thiesing, of the Legislative Reference Bureau, Library of Congress, be printed as a Senate document.

Attest:

JAMES M. BAKER, *Secretary.*

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TRADING WITH THE ENEMY—MEASURES ADOPTED BY GERMANY.

[By Theo. H. Thiesing, Legislative Reference Division, Library of Congress, Washington, D. C.]

Under the old maxim of British law prohibiting trading or any other intercourse with alien enemies, Great Britain and her allies adopted, soon after the outbreak of the European war, measures affecting German business and establishments within their jurisdiction. These measures may be summed up as sequestration, confiscation, and liquidation of German property, prohibition of payments to Germans, and annulment of contracts entered into with Germans.

In retaliation for these measures, hitherto foreign to German law, the Bundesrath, acting under the authority conferred by law of August 4, 1914, issued ordinances duly corresponding to the measures adopted by Great Britain and her allies.

The first retaliatory step was the ordinance of September 4, 1914. This ordinance empowers the State authorities to appoint, with the approval of the imperial chancellor, inspectors for any undertaking,¹ or branch of undertaking, which is managed or supervised in an enemy country, or the profits of which are either wholly or partly remitted to an enemy country. These inspectors are charged with the duty to prevent, with due regard to the owner's property and private rights, such enemy undertakings from conducting their business in a manner adverse to German interests, as well as from transmitting funds or property abroad. They have power to prohibit any business transaction or communication regarding the property or any disposition thereof; to inspect books and papers, ascertain the assets, and require information on all matters concerning the business. The manager or employees are subject to penalties if they transmit money or other property to an enemy country, unless authorized by the inspectors, or if they do not comply with the requests of the inspector.

This ordinance was amended by the ordinance of October 2, 1914, so as further to apply to cases wherein the enemy undertaking was left without any manager or employee. The court was to appoint, upon application of the inspector, a person to represent the owner and to conduct the business under the supervision of the inspector.

Far-reaching measures were put into force by the ordinance of September 30, 1914, which was originally directed only against Great Britain, but which by subsequent ordinances—October 20, November 19, 1914, February 4, October 14, 1915, May 14, August 28, November 24, 1916—was extended to France, Russia, and Finland, Egypt

¹ The term "undertaking" is used here in the sense of the German word "Unternehmung," applied in all the ordinances and denoting any business, mercantile association, or any other limited or unlimited business associations.

and French Morocco, Portugal, Roumania, and Italy. The ordinance makes it an offense, punishable by fine and imprisonment, to make payments or transmit to the above-mentioned enemy countries money, drafts, or other negotiable instruments, or to export, contrary to any existing prohibition, goods to such countries, or to send such goods from any other country to any such enemy country. The imperial chancellor may permit exceptions to these rules.

Payments may be made, however, to branch establishments in Germany of undertakings or persons domiciled in an enemy country; but the time for the payment of any such debt or for the performance of any obligation affecting proprietary rights of such undertakings or persons is indefinitely postponed. No interest will accrue on account of such postponement.

The amendment of October 13, 1914, allows the transmission of payments which are necessary for the acquisition, maintenance, or prolongation of patent and trade-mark rights.

The prohibition of payments does not apply, according to ordinances of December 20, 1914, and January 17, 1917, where payment of the debt is made to a German who is owner of or partner in an undertaking and has left the enemy country on account of the war, or where the debt was due, before the outbreak of war with the particular country, to a German residing within the Empire or in one of the countries allied with Germany, or in the occupied territories, or to a concern whose partners are Germans. In cases where a German or a national of one of the countries allied with Germany, or a juristic person in the occupied districts, is concerned, the imperial chancellor may grant exceptions to the prohibition of payments. Further exceptions to the prohibition of payments are allowed by ordinance of October 20, 1915, permitting the remittance of rent due in enemy countries, unless sufficient security is on deposit in the particular enemy country, and, by ordinance of April 19, 1916, permitting payments to persons residing in the occupied districts of Russia.

In retaliation for the measures adopted by the French Government, ordering the sequestration of German undertakings, the ordinance of November 26, 1914, decrees the compulsory administration of certain French undertakings, namely, those undertakings of which the capital either wholly or principally belongs to French citizens. The ordinance has been extended by ordinances of December 22, 1914, March 4, 1915, May 14, September 26, and November 24, 1916, so as to affect also British, Russian, Portuguese, Italian, and Roumanian undertakings, respectively.

Upon the appointment of an administrator by the State authorities, with the consent of the imperial chancellor, the enemy citizen or subject loses possession of his property; his rights and powers are transferred to the administrator, who may either continue the business of the undertaking or confine his action to the carrying out of pending transactions and then terminate the business. A liquidation of the undertaking is not contemplated within the scope of these provisions; such liquidation, however, was ordered later for British undertakings.

In order to prevent enemy undertakings from transferring by agreement with Germans or neutrals interests in such undertakings, thereby avoiding the effects of the provisions of the ordinance, the ordinance

of January 5, 1915, decrees that such transfers made after November 26, 1914, do not exempt the undertakings from the application of the ordinance, and that any person having entered into an agreement of transfer may rescind the contract and give notice to the administrator within one month after the undertaking has been placed under compulsory administration.

The ordinances of September 4 and November 26, 1914, do not contain any provision regarding the liability of the appointed administrator. Therefore, questions involving claims brought by interested persons against the administrator for alleged neglect of duty were left to the courts for settlement, leaving the determination of the liability to judicial interpretation. To remedy this unsatisfactory situation, and to remove any handicap in the administration of enemy undertakings, the ordinance of June 24, 1915, requires the complainant to submit the claim arising out of any alleged misconduct of the administrator to the State authorities, who pass upon the merits of the claim, and, if it appears to be valid, it is then referred to the courts. The ordinance also punishes managers or employees for refusing to give information concerning the undertaking.

The application of the provisions of the ordinance of November 26, 1914, also raised the question whether the property of enemy undertakings with their situs abroad, and maintaining no branch nor owning any real property within the Empire should be placed under administration. The ordinance of February 10, 1916, answers this question in the affirmative and provides that any kind of property of such undertakings, as well as bequests and devises, are to be placed under the administrator, and it further stipulates that in special cases any other property of enemy origin be subjected to compulsory administration.

Proceedings on execution and in bankruptcy against the property of enemy undertakings under compulsory administration by the terms of the foregoing ordinance, may, as provided by ordinance of August 24, 1916, be instituted only with the permission of the State authorities: and where such proceedings were begun prior to October 7, 1915, the administrator may ask for a stay in proceedings. It is also provided that the administrator may, in derogation of the provisions of ordinance of September 30, 1914, demand satisfaction of debts owing to such undertakings.

In retaliation for the measures adopted by Great Britain as early as August and September, 1914, France on May 27, 1917, Russia on March 11, 1915, and, later, Portugal, allowing the infringement of patent rights held by Germans, the ordinance of July 1, 1915, authorizes the imperial chancellor, by special orders, to decree in the public interest the impairment and abrogation of patent and trade-mark rights and copyrights of nationals of the above mentioned powers. Licenses will be granted only upon application, as specified by ordinance of July 2, 1915, for the use of the patent, etc., right. In no case does the licensee acquire a permanent right; the license may be revoked at any time, if the circumstances change, or the conduct of the holder demands it. A claim for damages by the persons whose rights have been infringed upon is not recognized. Moreover, enemy aliens can not acquire new patent and trade-mark rights, or copyrights, and the patent office is freed from all obligations to

protect existing rights. With respect to patent rights enjoyed by Russian subjects the law is retroactive, depriving the holders of protection on the day when the rights of German patent holders were abrogated in Russia. Ordinance of January 9, 1917, extends this ordinance to Italy; previously, by ordinance of May 2, 1916, the convention between Germany and Italy regarding copyrights was denounced.

In pursuance of the principle of restricting enemy private rights only by way of retaliation for violations of German private rights by enemy governments, and in consequence of the measures adopted by Great Britain, France, and Russia affecting all German property within their respective jurisdictions, the Bundesrath issued the ordinance of October 7, 1915, later extended by ordinances of October 14, 1915, May 14, August 28 and November 24, 1916, so as also to affect Egypt and French Morocco, Russia, Roumania, and Italy, ordering the sequestration of all enemy property within the Empire. The ordinance is designed to obtain complete control over enemy property, whether it consists of actual property, claims against German debtors, bank deposits, or any other values, and to prevent its removal from German jurisdiction. Any alienation, transfer, or mortgaging of such property is void, with the exception of property belonging to enemy aliens within the Empire, enemy property invested in German undertakings and transferred to a person within the Empire, or property already placed under an administrator.

Detailed provisions in execution of the foregoing were issued by ordinance of October 10, 1915, requiring the registration of all enemy property, including claims, bank deposits, or other values in the possession or custody of alien enemies or Germans within the Empire, with the exception of property of less than 500 marks or already under compulsory administration.

The ordinance of October 21, 1915, superseded by the ordinance of April 19, 1916, allows alienation, transfer, or mortgaging of property belonging to persons in the occupied districts of Russia.

The most stringent measure of retaliation was adopted by ordinance of July 31, 1916, providing for the liquidation of British undertakings, i. e., undertakings under the control of subjects of Great Britain and Ireland, the British colonies and possessions, with the exception of Canada and the South African Union.

Under its provisions the imperial chancellor, or an imperial commissioner appointed by him, is authorized to order the liquidation of undertakings with principally British capital or under British control or management, including branch establishments, real estate and other property. With regard to insurance companies special regulations are to be adopted, as these companies have been treated throughout the regulations as a class by themselves on account of their intimate association with the economic interests of the German people.

Apart from this special type of case, the State authorities appoint, according to the regulations to be issued by them and approved by the imperial chancellor, a liquidator, who acquires title to the undertaking and winds up its affairs. He exercises the rights of the British owner or shareholder whose rights are suspended. The liquidator's transactions are legally binding; he must, if the undertaking was registered, cause the cancellation of such registration; he

may demand payments of debts in derogation of the prohibition of payments to alien enemies; managers and employees must give him any desired information concerning the undertaking; secreting of property from him is punishable; he may dispose of the undertaking as a whole or transfer British interests to third parties. A claim against the liquidator for damages caused by any of his actions may be brought by the owner or party in interest with the permission of the State authorities; such permission must be given where willful neglect of duty is shown. The expenses of the liquidation are paid out of the assets of the undertaking, and the balance, in so far as a British subject is entitled to it, is set aside in trust for him. Where such British subject resides within the German Empire, the State authorities may authorize payment to him.

Where property subject to liquidation is mortgaged, the imperial chancellor may, according to the authority conferred by ordinance of January 18, 1917, order that in case of sale of such property the mortgage is to be canceled and the mortgagor's rights be secured in some other way.

Principles of the British trading with the enemy act are embodied in the ordinance of December 16, 1916, authorizing the imperial chancellor to declare void, in whole or in part, any contract entered into by a German subject, juristic person, or undertaking in the Empire or its colonies, and a subject juristic person or undertaking in Great Britain and Ireland, France, or Italy upon petition of the former. In case of fulfillment of the obligations by the seller, however, the declaration has no effect or where the purchaser has already paid the price repayment may not be demanded.

The decision of controversies regarding the effect of war on rights and obligations growing out of a contract rests with the court having jurisdiction over the German party, who may serve notice on the alien enemy defendant by publication and also by registered letter sent under his address and mailed in a neutral country. Such service must be proved, otherwise the court will adjourn the matter and order new service.



